



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

EPA Region 5 Records Ctr.



275770

REPLY TO THE ATTENTION OF.

C-14J

**VIA FACSIMILE AND**  
**VIA CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

September 7, 2000

Patrick Rhoa, Esq.  
Walter & Haverfield  
1300 Terminal Tower  
Cleveland, OH 44113-2253

Re: Skinner Landfill, West Chester, Ohio

Dear Mr. Rhoa:

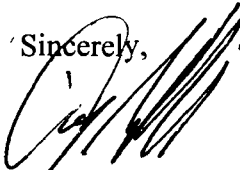
In our previous discussions I advised you that EPA had not received certain information pertaining to your client, Sealy, that is contained in the report issued by John Barkett (the allocator), as part of the alternative dispute resolution process in The Dow Chemical Co., et al. v. Acme Wrecking Co. Inc., et al., (No. C-1-97-0307). The allocator's report details the relative contributions of potentially responsible parties linked to the Skinner Landfill (Site). EPA, however, is not a party to that proceeding and has only received portions of the report during settlement discussions. EPA is currently taking response actions at the Site pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), to abate the release or threat of release of hazardous substances. EPA has claims against the potentially responsible parties at the Site for response costs pursuant to Section 107 of CERCLA, 42 U.S.C. §9607. Most of the potentially responsible parties connected to the Site have reached a settlement with EPA, either as a cash-out party or as a member of the work group which will implement the remedial action at the Skinner Site

I understood from our previous discussions that Sealy had reached a settlement in principle with the plaintiffs in Dow Chemical v. Acme Wrecking, and had hoped to reach a settlement with EPA on the same basis. As I explained to you, EPA cannot review the basis of Sealy's settlement with the plaintiffs, or settle with Sealy as a cash-out party, until EPA receives the portion of the allocator's report describing Sealy's relative contribution at the Site. EPA still has not received this information. In order for Sealy to settle with EPA it must submit the portion of

the allocator's report describing Sealy's connection to the Site. The allocator's report should contain information pertaining to volume and toxicity which may then be used to reach a settlement with EPA. In addition to the narrative section from the allocator's report explaining Sealy's involvement at the Site, it is important that EPA receive the allocator's final recommendations on Sealy's total volumetric contribution which is included in an appendix to the report.

If EPA does not receive this information Sealy may be liable under the principles of joint and several liability for a greater share of EPA's response costs than its relative contribution at the Site. If I do not receive the information described herein **by September 15<sup>th</sup>**, I will assume that Sealy is not interested in reaching a settlement and EPA will consider all of its enforcement options, including cost recovery litigation.

Please do not hesitate to contact me at (312) 353-8870 should you have any questions regarding this matter.

Sincerely,  
  
Craig Melodia  
Assistant Regional Counsel

cc: Drenaye Houston, DOJ